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FINANCING OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

Report of the Advisory Committee on Administrative and Budgetary Questions

I. INTRODUCTION

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on conditions of service and allowances of the members of the International Tribunal (A/C.5/48/36), the report of the Secretary-General on the financing of the Tribunal, as requested by the General Assembly in its resolution 47/235 of 14 September 1993 (A/C.5/48/44) and the addendum to that report, containing the revised estimates relating to the financing of the Tribunal in 1994-1995 (A/C.5/48/44/Add.1). During its consideration of these items, the representatives of the Secretary-General provided additional information to the Advisory Committee.

2. The Security Council, by its resolution 827 (1993) of 25 May 1993, decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Council upon the restoration of peace. In the same resolution, the Council also adopted the statute of the International Tribunal (S/25704, annex).

3. The Advisory Committee notes that several provisions of the statute of the International Tribunal adopted by the Security Council have a direct relevance to the analyses by the Committee of budgetary and administrative matters relating to the Tribunal. These include the following:

(a) The International Tribunal shall consist of two Trial Chambers, an Appeals Chamber, the Prosecutor and a Registry, servicing both the Chambers and the Prosecutor (article 11);

(b) The Chambers shall be composed of 11 independent judges (article 12);

(c) The judges shall be elected by the General Assembly from a list submitted by the Security Council (article 13, para. 2);

(d) The judges shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election (article 13, para. 4);

(e) The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. The Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations (article 16, para. 4);

(f) The Registry shall be responsible for the administration and servicing of the Tribunal and shall consist of a Registrar and such other staff as may be required. The Registrar shall be appointed by the Secretary-General and serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations (article 17);

(g) The International Tribunal shall have its seat at The Hague (article 31; see also para. 17 below);

(h) The expenses of the International Tribunal shall be borne by the regular budget of the United Nations in accordance with Article 17 of the Charter of the United Nations (article 32).

The Committee wishes, in this context, to draw the attention of the General Assembly to Article 17, paragraph 1, of the Charter of the United Nations, which states: "The General Assembly shall consider and approve the budget of the Organization."

II. CONDITIONS OF SERVICE AND ALLOWANCES OF THE MEMBERS OF THE INTERNATIONAL TRIBUNAL

4. In paragraphs 5, 6, 7, and 8 of his report (A/C.5/48/36), the Secretary-General proposes terms and conditions of service that could be applied to the judges of the International Tribunal.

5. The Advisory Committee discussed the conditions of service of the judges of the International Tribunal in great detail. This discussion took into account the various methods by which the judges of the Tribunal might be paid. During the discussion, various ideas were raised, including the applicability of paragraphs 1 and 4 of Article 32 of the Statute of the International Court of Justice. The Committee also considered a number of issues related to pensions

and other items of compensation, taking into account the terms of office of the judges of the International Tribunal.

6. Given the fact that the terms and conditions of service of the judges of the International Tribunal have been to a large extent predetermined by the Security Council's adoption of the statute of the Tribunal, the Advisory Committee is of the opinion that consideration at this time of the proposals of the Secretary-General (A/C.5/48/36, paras. 5-8), is limited by the terms spelled out in article 13, paragraph 4, of the statute of the Tribunal. In this connection, the Committee points out that in a letter dated 3 June 1993 addressed to the Permanent Representatives of Member States, calling for nominations for judges of the Tribunal, the Under-Secretary-General for Legal Affairs, the Legal Counsel, indicated that the judges of the Tribunal were to serve on a full-time basis and thus might not engage in any other occupation of a professional nature during their tenure in office.

7. The Advisory Committee points out that Article 32, paragraphs 5 and 7, of the Statute of the International Court of Justice provides that the conditions of service of the International Court of Justice are determined by the General Assembly. The Committee is of the opinion that, had it had an opportunity to review the administrative and budgetary aspects of the statute of the International Tribunal before it was adopted, it would have made recommendations to the General Assembly on conditions of service of the judges of the Tribunal taking into account, inter alia, the following:

(a) The exclusive mandate of the Tribunal and its duration, as stated by the Security Council in resolution 827 (1993) (see para. 2 above);

(b) The work programme of the Tribunal as it relates to the workload of its judges;

(c) The election of judges of the International Tribunal for a term shorter than that of judges of the International Court of Justice, which would have an impact on a number of the conditions of service of the judges of the Tribunal, including pensions.

8. The Advisory Committee recalls General Assembly resolution 47/235, by which the Assembly reaffirmed,

> "in the context of Security Council resolution 827 (1993) and with respect to the financing of the International Tribunal, the role of the General Assembly as set out in Article 17 of the Charter of the United Nations, as the organ to consider and approve the budget of the Organization, as well as the apportionment of its expenses among Member States".

The Advisory Committee believes that questions relating to conditions of service, which are issues having administrative and budgetary implications, should be brought to the General Assembly for its action before final action is taken in any other forum.

9. The Advisory Committee believes that, as the work of the International Tribunal proceeds, the precise nature of the requirements of the Tribunal and

its judges will more clearly emerge. It may then be possible to elaborate on the conditions of service of the judges in more detail, consistent with the requirements of the statute. The Committee intends, therefore, to revert to this matter in the light of experience gained and newly available information (see para. 12 below).

III. REVISED ESTIMATES RELATING TO THE FINANCING OF THE INTERNATIONAL TRIBUNAL IN 1994-1995

10. The report of the Secretary-General of 8 December 1993 (A/C.5/48/44), provides some basic information available at that time regarding the development of the International Tribunal, its organization, activities and requirements during the bienniums 1992-1993 and 1994-1995. This information has been in some instances updated in the addendum to the Secretary-General's report (A/C.5/48/44/Add.1) issued on 11 March 1994; parts I and II thereof contain background information on the question of the financing of and recent developments in the International Tribunal, which held its inaugural session from 17 to 30 November 1993, its second session from 17 January to 11 February 1994 and is scheduled to hold its third session from 25 April to 6 May 1994.

11. The Secretary-General currently estimates that resources in the amount of $32,642,700 (net of staff assessment) would be required in the biennium 1994-1995 in connection with the financing of the Tribunal. These resources would provide, inter alia, for salaries, emoluments and common staff costs of 11 judges ($3,770,000), travel of the President of the Tribunal ($21,200), salaries and common staff costs of 108 temporary posts ($11,631,000), including an Under-Secretary-General post of the Prosecutor, an Assistant Secretary-General post of the Registrar, 55 posts at the Professional and higher categories, 51 General Service posts and a provision of $5,322,200 under general temporary assistance for 28 Professional and 28 General Service conference-servicing staff. In paragraph 16 of the addendum, the Secretary-General indicates that up to 46 security guards may be required at a cost of $1.3 million for 1994-1995.

12. The Advisory Committee recalls that, in its earlier report on the financing of the Tribunal (A/47/980), the Committee requested the Secretary-General to submit a report on the requirements of the Tribunal; it had indicated to the Secretary-General that the report should, inter alia, provide detailed justification of the number of posts and their grade level (ibid., paras. 2 and 3). This has not been done in the addendum submitted by the Secretary-General. Almost no additional information has been provided to justify the numbers and levels of staff requested. The Advisory Committee appreciates that reconsideration of the estimates for the Tribunal at this time has made it difficult for the Secretary-General to provide clarification and justification of his request on the basis of actual experience and performance. Likewise, the Advisory Committee is still not in a position to pronounce itself on these issues. The Advisory Committee therefore requests the Secretary-General to submit, by 1 November 1994, a further report on the International Tribunal, its financial performance and its requirements on the basis of experience.

13. With regard to staffing issues, the report requested above should provide precise justification for the numbers and levels of staff requested in each category. An explanation should be provided, for example, of the numbers requested and of the differentiation in grade levels for prosecutors and investigators, the high ratio of General Service to Professional posts and the requirements for temporary posts. The nature of the contractual relationship to be entered into for the provision of security guards and the justification for their number should be included in the report as well. It is also the expectation of the Advisory Committee that all posts, with the exception of the posts of Prosecutor and Registrar (the level of which have been specifically identified in the statute of the Tribunal), should be properly classified. The Advisory Committee also requests a clarification of the precise status of the staff of the Tribunal and the conditions under which staff are to be provided voluntarily by Member States. Furthermore, the Advisory Committee requests additional information and clarification with respect to the criteria for determining resources for the Defence Council and the level of these resources.

14. The Secretary-General indicates in paragraph 8 of the addendum to his report that "it is now anticipated that trials may in fact begin some time in the latter part of 1994." In this connection, an additional provision of $869,200 is made under general temporary assistance over and above the provision of $4,453,000 which was initially proposed in document A/C.5/48/44 (para. 40) in connection with conference-servicing requirements relating to the proceedings of the Tribunal in 1994-1995. The Secretary-General had estimated the initial provision on the basis of two sessions each day for 150 days in one Trial Chamber and publication of an estimated 5,000 pages of documentation (see A/C.5/48/44, para. 40). The Advisory Committee is not in a position to make a qualified judgement in regard to the proposed overall requirements under general temporary assistance owing to the absence of information in the submitted report and its addendum regarding workload statistics and the programme of work of the Tribunal during 1994-1995. These issues should be addressed once again in the report requested in paragraph 12 above.

15. Included also in the overall estimated requirement of $32,642,700 for 1994-1995 is a provision of $2,607,000 for rental and maintenance of premises. Paragraphs 11 to 15 of the addendum to the report of the Secretary-General provide updated information in this regard. The Advisory Committee notes that it is the view of the Secretary-General that the Aegon building at The Hague is deemed to be the most suitable facility available, although the building lacks space for a trial chamber. The Committee was informed that the owners of the building are willing to finance the construction of a trial chamber as well as the construction and/or installation of holding cells up to the amount of 3,500,000 Netherlands guilders ($1,891,900) and to recover this investment through a surcharge on the basic rent over the period of the lease.

16. As indicated in paragraph 13 of the addendum to the Secretary-General's report, an offer has been made that, were the United Nations to enter into a four-year lease for premises in the Aegon building, the proposed provisional basic rental cost for 5,797 square metres of space would be $642,100 per year for 1994-1995. The Secretary-General estimates that under such an arrangement, resources of $1,827,100 (including a two-year rental surcharge) would be required for the rental costs of the Aegon building until 31 December 1995; the

rent would be subject to annual adjustment on the basis of movement in the consumer price index maintained by the Central Bureau of Statistics of the Netherlands.

17. The Advisory Committee recalls in this regard that, by paragraph 6 of its resolution 827 (1993), the Security Council decided that the determination of the seat of the International Tribunal was subject to the conclusion of appropriate arrangements between the United Nations and the Netherlands acceptable to the Council, and that the International Tribunal might sit elsewhere when it considered it necessary for the efficient exercise of its functions.

18. The Advisory Committee also recalls that, in its decision 48/461 of 23 December 1993, the General Assembly stated that the commitment authorization it was granting was without prejudice to recommendations that the Advisory Committee might make to the General Assembly and the decisions that the Assembly might take thereon with regard to administrative matters, including, inter alia, the location of the court. The Advisory Committee was informed that as of the date of the present report the Netherlands is the only Member State in active discussion with the Secretary-General as to the seat of the Tribunal. The Advisory Committee requests the Secretary-General to expedite his negotiations in this regard, and to report the outcome to the General Assembly prior to signature.

19. The Committee also requests the Secretary-General to explore the establishment of common administrative arrangements for the United Nations entities at The Hague, subject to the statutory requirements of the bodies concerned, and to report on this in the context of the report requested in paragraph 12 above.

20. Part IV of the addendum to the Secretary-General's report (A/C.5/48/44/Add.1) provides information on the Trust Fund for the International Tribunal. The Committee was informed that as of March 1994 contributions for the Trust Fund have been received in the amount of $1,015,700, and pledges to the Trust Fund have been made in the amount of $3,363,000.

21. In the light of the above observations and recommendations and pending the final decision of the General Assembly on the mode of financing of the Tribunal and the receipt of the report requested in paragraph 12 above, the Advisory Committee recommends that the Secretary-General, at this stage, be authorized to enter into further commitments not exceeding $11 million until 31 December 1994. The authority would be inclusive of the existing authority of $5,594,000.